

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-133360-12

Date:

January 28, 2013

Legend

Parent =

Sub 1 =

Sub 2 =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

N =

\$X =

Dear :

This letter is in response to a letter dated August 2, 2012 submitted on behalf of Parent, requesting that the Commissioner make a determination under §1.1502-75(b) of the Income Tax Regulations that Sub 2 joined in the making of the initial consolidated return filed by Parent for the taxable period ending on Date 6. Additional information was provided in a facsimile dated November 29, 2012. The information submitted in that request is summarized below.

SUMMARY OF FACTS

Parent is a State A corporation that was incorporated on Date 1 and acts solely as a holding company. On Date 3, Parent acquired all the outstanding shares of Sub 1.

On Date 2, Sub 2 was formed as a State B corporation. On Date 4, Sub 1 entered into a stock subscription agreement with Sub 2 to purchase N shares of Sub 2 for \$X. On Date 5, Sub 1 satisfied the terms of the agreement and became the sole owner of Sub 2. As of Date 6, no other common or preferred stock of Sub 2 had been issued, leaving Sub 1 as the sole owner of Sub 2. For the taxable period ending on Date 6, Parent became the ultimate parent of an affiliated group consisting of Parent, Sub 1 and Sub 2 ("Parent Group").

For the taxable period ending on Date 6, Sub 2 was largely dormant, with de minimis items of income, gain, deduction, loss, or credit. For taxable period ending on Date 6, Parent Group filed an initial consolidated return reporting all of the activities of Parent and Sub 1, but neglected to include Sub 2 on the consolidated return. Sub 2 did not file a separate return for the taxable period ending on Date 6. The period of limitations on assessment under Section 6501(a) has not expired for Parent's Consolidated Group's taxable period ending Date 6.

REPRESENTATIONS

Parent has made the following representations:

- (a) Parent, Sub 1 and Sub 2 are an affiliated group as defined in I.R.C. § 1504(a) for the taxable period ending on Date 6.

- (b) Parent Group timely filed an initial consolidated return for the taxable period ending on Date 6 including all of the activities for Parent and Sub 1. Sub 2, a largely dormant entity, was not included in the consolidated return; the Form 851 did not include Sub 2 nor was a Form 1122 for Sub 2 attached to the consolidated return. None of the items for Sub 2 were reported on a separate return.

APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under §1502, in accordance with §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, §1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in §1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by §1.6001-1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of §1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

RULING

Based solely on the information submitted and the representations made, we rule that for purposes of §1.1502-75(h)(2), Sub 2 shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable period ending on Date 6, and thus each shall be treated as having joined in the making of the consolidated return for such period (§1.1502-75(b)(3)).

Within 45 days of the date of this letter, Parent shall file amended returns for the taxable period ending on Date 6, and all subsequent taxable periods necessary, to include Sub 2 items on the Parent's Consolidated Return, and to include Sub 2 on Parent's Form 851.

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)